IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7253 OF 2005

Shri Hemant Busa & Anr. .. Petitioners

Vs.

Shri S.Raman @ Shankaran Raman Sbetha & Ors. .. Respondents

Mrs.A.R.S.Baxi for respondent no.2

Mr.D.S.Joshi i/b Mr.I.R.Kulkarni for respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 29TH NOVEMBER, 2005

P.C.:

1. The present Writ Petition is filed challenging the order dt.19.9.05 passed on Exh.No.43 in Special C.S. No.16 of 2005. By the aforesaid order the learned trial court has rejected the application to take written statement on record which is beyond the period of 90 days as per amended provisions of the Civil Procedure Code.

2. It has been now held by this court in the case of Chintaman Sukhdeo Kaklij & Others Vs. Shivaji Bhausaheb Gadhe & others reported in

2004(5) Bom.C.R.573 that the time prescribed in Order 8 Rule 1 of the Civil Procedure Code is not mandatory and in appropriate case allows the defendant to file written statement even after the expiry of time. I have considered the application which has been prefered by the defendants. Defendants have contended that because of non-availability of certain documents from the board there has been delay of 40 days in filing written statement. In my opinion, in the interest of justice petitioner be permitted to file written statement. Accordingly order dt.19.9.05 is quashed and set aside. Trial Court is directed to take written statement of petitioner on record if filed within two weeks from today.

3. Trial court to proceed in the matter from the stage of written statement and decide the matter in accordance with law. In the facts and circumstances of the present case, I am of the opinion that respondent no.1 should be compensated in terms of costs. Accordingly, petitioners are directed to pay cost of the present proceeding to respondent no.1 quantified at Rs.5000/-. Cost to

be paid within a period of 2 weeks from today.